IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

MACA.No. 639 of 2006(A)

O.P(MV).NO.648/1998 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/2ND RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LTD.,
NOW REP. BY ITS DEPUTY MANAGER,
REGIONAL OFFICE, M.G.ROAD, KOCHI-11.

BY ADV. SRI.MATHEWS JACOB (SR.),
SRI.P.JACOB MATHEW.

RESPONDENT/PETITIONER:

T.V.SIVASANKARAN,
S/O.VASU NAIR, MOHAYIL HOUSE,
NEAR ST.JUDE CHURCH, AMBALAMEDU.

BY ADV. SRI.VIVEK VARGHESE P.J.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 14/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.A.C.A. No. 639 of 2006

Dated this the 14th day of June, 2007

Judgment

Koshy, J.

Insurance company is questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal to the first respondent. First respondent was a workman employed as a supplier in the canteen run by the Cochin Refineries Employees Consumer Co-operative Society Limited. He met with an accident as he was hit down by a car negligently driven by the driver of the vehicle insured by the appellant insurance company. At the time of the accident, he was drawing a total salary of Rs.5,306/- per month. He was aged 30 at the time of accident. Apart from reimbursement of expenses under various items, the tribunal held that he is entitled to get compensation for disability as Rs. One lakh and loss of earning power as Rs.60,000/-. In this appeal, only dispute is regarding the amount of compensation granted for disability and earning power.

2. It is the contention of the appellant that there is no evidence to show that his services were

terminated due to the accident and, therefore, there is no loss of earning capacity. Further, a Full Bench of this Court held that compensation cannot be granted separately for disability and loss of earning power together as it goes together. Here, the percentage of disability certified was 55%. The above disability is not disputed. However, a benevolent employer may try to employ him for some more time and even if he was asked to work, he can do the same with extreme difficulties as disability is 55%. If compensation is calculated for a person aged 30 taking guidance from the second schedule, 17 can be the multiplier. (See: Supe Dei and others v. M/s.National Insurance Co. Ltd. and another (JT 2002 (Suppl.1) SC 451). If Rs.5,000/- is taken as monthly income, compensation for disability of 55% will come to Rs.5000 x 12 x 17 x $\frac{55}{100}$ = Rs.5,61,000/-. Since he was employed, his employment was not lost. Tribunal did not calculate compensation in such a way. It is not disputed that he was having 55% disability. Even if he was allowed to continue in office for some more time, after retirement he would not get any other work. His employment was not pensionable. Till the end of his life,

he has to live with these difficulties. It cannot be stated that no compensation can be allowed for disability. Since his services were not temporary, we cannot calculate compensation on the basis of salary he was getting at the time of accident. Even if a notional income of Rs.2,000/- is taken for calculation purposes, for 55% disability, he will get Rs.2,24,400/-. Here, for disability and earning power together, tribunal has granted only Rs.1,60,000/- which is just and reasonable considering the nature of difficulties suffered by the person.

In the above circumstances, we see no ground to interfere in the impugned award and the appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.A.C.A.NO.639/2006

JUDGMENT

Dated:14th June, 2007